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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MITRA RASHTI,

Plaintiff and Appellant,

v.

BRENDA BRAMS,

Defendant and Respondent.

B218712

(Los Angeles County
Super. Ct. No. SS018191)

APPEAL from an order of the Superior Court of Los Angeles County. Gerald Rosenberg, Judge. Affirmed in part and reversed in part.

Mitra Rashti, in pro. per. for Plaintiff and Appellant.

No appearance by Defendant and Respondent.

Mitra Rashti appeals from the denial of her request for a restraining order, and the award of attorney's fees to her landlord Brenda Brams. Because Rashti failed to make the necessary showing of harassment, we affirm the denial of the requested injunctive relief. However, because there was no evidentiary support for the award of attorney's fees, we reverse that order .

FACTUAL SUMMARY

Appellant Mitra Rashti occupies an apartment in a building owned by respondent Brenda Brams. The parties have long-standing disagreements, and Rashti believes Brams seeks to evict her to obtain higher rent from another tenant. The dispute now before this court arises primarily from Brams's installation of security cameras in the building in 2008, one of which, according to Rashti, films those entering and leaving her apartment. She asserts that this both violates her privacy and, because of her religious beliefs, prevents her from leaving her apartment on the Sabbath and religious holidays.

In June 2009, Rashti sought restraining orders, asserting she was being harassed by Brams's installation of the cameras. She also alleged that Brams physically and emotionally harassed her by calling her names, embarrassing her in front of others, improperly painting her apartment, and attempting to physically attack her. Brams denied the allegations, asserted the cameras were installed for security reasons, and did not agree to the requested orders.

The court issued an order to show cause and set the matter for hearing on June 25, 2009. At the hearing, the court heard the testimony of Mitra Rashti, Farshad Okhovat, and Brenda Brams.

Rashti, who was represented by counsel, testified to an event in March 2009, when Brams came to her apartment with others to review painting needs. While Rashti described a verbal disagreement, she did not testify to any physical altercation or any attempted assault. She did, however, testify that Brams called her "crazy" and "lunatic." Prior to that date, according to her testimony, the same language had been used by both Brams and her son.

Rashti also described the location of the cameras, and the nature of her objection to them, including the manner in which she believed they violated her religious obligations.. The court asked Brams to describe both the events of March 12, and the issue concerning the cameras. She did not deny using the language Rashti had described, but did testify she installed the cameras for security reasons.

After hearing argument from Rashti's counsel, the court invited further testimony, which was provided by Okhovat. He testified that he had gone with Rashti to put documents on Brams's door, and that Brams was angry and yelled at them.

Although Rashti had asked the court to review photographs, her counsel introduced no exhibits at the hearing. After the hearing the court issued a minute order discharging the order to show cause and dismissing the application.

On July 6, 2009, Rashti, now representing herself, filed a Motion for Reconsideration, attaching numerous exhibits. She asserted that the evidence attached to the motion had been in the courtroom and given to Brams's counsel, but that her counsel had not filed it at the time of the hearing. She filed an amended motion on July 8, and further declarations on August 3. Brams opposed the motion, and sought attorney's fees of \$1,500, as well as other relief. The fee request was not made by noticed motion, and was neither supported by declarations nor by documentary evidence to establish the basis for the claim.

The court heard the motion on August 4, 2009, denied the reconsideration, and granted the requested attorney's fees, payable within 10 days. In the same minute order, however, the court then set the matter to be heard again on August 20, as the result of a request for accommodation by Rashti that had not been brought to the court's attention prior to the hearing. Rashti filed further supplementary evidence, a request for attorney's fees, and opposition to Brams's request for fees and other relief. At no time did Rashti indicate that the new information on which her motion was based could not have been produced at the time of the initial hearing; instead, she asserted her attorney had the information but failed to file it because Brams's counsel indicated the intention to object to its admission.

At the hearing on August 20, the court allowed a friend of Rashti's to speak for her as an accommodation. The court also indicated it had read and considered the new documents, and then denied the motion for reconsideration and ordered payment of the previously ordered attorney's fees forthwith.¹ Rashti timely appealed. (Code Civ. Proc., § 904.1 subd. (a)(6).)²

DISCUSSION

Establishing Harassment

A person who has suffered harassment may seek a temporary restraining order and injunctive relief under section 527.6. There are three possible grounds for finding actionable harassment under this statute: (1) “[u]nlawful violence,” (2) a “credible threat of violence,” and (3) “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” (§ 527.6, subd. (b).)

After a plaintiff files a petition for an injunction under section 527.6, the court must receive relevant testimony and may issue an injunction only if it finds, by clear and convincing evidence, that harassment exists. (§ 527.6, subd. (d).) “‘Clear and convincing’ evidence requires a finding of high probability.” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919). We review the court's decision to determine whether there is sufficient evidence to support the trial court's determination; “we review the evidence before the trial court in accordance with the customary rules of appellate review. We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is

¹ After the entry of the order, Brams filed an application for an order to show cause re contempt for failure to pay the attorney's fees, and there were various related proceedings. The hearing was stayed by order of this Court, and, in light of our disposition of the attorney's fees, on remand, the order is to be discharged.

² All further statutory references are to the Code of Civil Procedure.

supported by substantial evidence which is reasonable, credible and of solid value.” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Here, we find no evidence that would have supported the issuance of the requested relief, and affirm.

The first ground for relief under section 527.6 is unlawful violence, defined as “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but [does] not include lawful acts of self defense or defense of others.” (§ 527.6, subd. (b)(1).) Although Rashti claimed in her petition that Brams assaulted, or attempted to assault her, she did not present evidence of any incident involving actual or attempted physical acts against her or of stalking. Thus, she did not establish any basis for relief on this prong of the statute.

The second ground under section 527.6 is a credible threat of violence, defined as “a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.” (See, e.g., *USS-Posco Industries v. Edwards* (2003) 111 Cal.App.4th 436 [party told coworkers that he had a gun and would kill them].) The evidence here failed to demonstrate that Brams engaged in a credible threat of violence, or indeed any threat of violence at all. The statements complained of were offensive, but not of a nature that would place any person in fear of his or her safety.

The third ground under section 527.6 is a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. (§ 527.6, subd. (b).) The course of conduct is “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” (§ 527.6, subd. (b)(3).) The conduct “must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.” (§ 527.6, subd. (b).) Rashti presented no evidence showing that Brams’s actions demonstrated a course of conduct or a pattern evidencing a continuity of purpose. While there was a clear course of disagreements between them, they related to upkeep of the apartment and showed no indication of intent to cause distress. The triggering event for the petition appears to have

been the dispute over the security cameras, but as to that, there was un rebutted testimony that they were installed for the legitimate purpose of enhancing security at the apartment for the benefit of all of the tenants.

Under these circumstances, there is nothing in the record that would have supported a grant of relief under any prong of the statute and the court's denial of the requested relief was proper.

Attorney's Fees

Section 527.6 subdivision (i) permits, but does not require, the trial court to award costs and attorney's fees to the prevailing party when a restraining order for harassment is sought. The determination whether to make such an award is committed to the discretion of the trial court. (*Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802-803.)

However, attorney's fees authorized by statute are considered costs recoverable by the prevailing party. (§ 1033.5, subd. (a)(10)(B). And, "[w]hen any statute of this state refers to the award of 'costs and attorney's fees,' attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment." (§ 1033.5, subd. (c)(5); see also Cal. Rules of Court, rule 3.1702 [notice of motion must be timely served and filed].) Brams failed to comply with the statute or the Rules of Court; the request for attorney's fees was not properly made, nor did she meet the statutory burden of proof. Accordingly, we reverse.

DISPOSITION

The order denying the injunction is affirmed. The award of attorney's fees is reversed, and the trial court is ordered to discharge the order to show cause re contempt. Each party is to bear her own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.